

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

MARCUS J. (MARC) MATHEWS,

Plaintiff,

v.

BIG BEAR AMERICAN MADE CHOPPERS, INC.,
PRO-ONE PERFORMANCE MANUFACTURING, INC.,
INDUSTRIAL MACHINING CO., STANDARD BOLT
NUT & SCREW CO, INC., ANORACK ANONDIZE
RACK COMPANY, INC., AIR FASTENERS, INC.,
GOLD RUSH MOTORSPORTS, INC, and MARC
SUSMAN d/b/a CLASIC & CUSTOM RIDES

Defendants.

Civil Action No.: 04-CV-1206
(NAM/DEP)

TOLLING AGREEMENT

WHEREAS, an action entitled *Marcus J. (Marc) Mathews v. Big Bear Choppers, Inc.; Pro-One Performance Manufacturing, Inc.; and Gold Rush Motorsports, Inc.* was commenced in the United States District Court for the Northern District of New York on October 19, 2004, and was assigned civil action number 5:04-CV-01206-NAM-DEP (the "Action");

WHEREAS, Plaintiff Marcus J. (Marc) Mathews filed an Amended and Supplemental Complaint on February 21, 2006, adding Industrial Machining Co., and Standard, Nut & Screw Inc. as defendants;

WHEREAS, an entry of default was had against Defendant Industrial Machining Co., on March 8, 2007;

WHEREAS, Marcus J. (Marc) Mathews filed a Second Amended and Supplemental Complaint on May 30, 2006, adding Anorack/Anondize Rack Company, Inc., and Air Fasteners, Inc., as defendants;

{H0635561.1}

WHEREAS, Marcus J. (Marc) Mathews filed a Third Amended and Supplemental Complaint on December 15, 2006, adding Marc Susman d/b/a Classic & Custom Rides as a defendant;

WHEREAS, Pro-One denied and continues to deny that it manufactured any of the component parts of the motorcycle which is the subject of the Action;

WHEREAS, the parties to this Agreement desire to discontinue the Action *without* prejudice as against Pro-One Performance Manufacturing, Inc., and toll all applicable statutes of limitations until the final termination of the instant Action; and

WHEREAS, it is the mutual intent of the undersigned to defer any litigation or claims involving the undersigned parties, without thereby altering the claims or defenses available to the parties, except as specifically provided herein.

NOW, THEREFORE, Plaintiff Marcus (Marc) Mathews, Big Bear American Made Choppers, Inc., Pro-One Performance Manufacturing, Inc., Standard Bolt, Nut & Screw Co., Inc., Anorack/Anondize Rack Company, Inc., Air Fasteners, Inc., Gold Rush Motorsports, Inc., and Marc Susman d/b/a Classic & Custom Rides, by and through their undersigned counsel, stipulate and agree as follows:

1. Within five (5) business days following execution of this Agreement and execution by all parties to the Action of a Stipulation of Dismissal in the form attached hereto as **Exhibit A** ("Stipulation of Dismissal"), Defendant Pro-One Performance Manufacturing, Inc., shall file said Stipulation of Dismissal with the Court.

2. All applicable statutes of limitations or repose shall be tolled until the final termination of this Action by settlement, stipulation, order and/or judgment ("termination").

3. In the event any party to this action discovers facts or evidence following the filing of the Stipulation of Dismissal which, in the sole discretion of his counsel, warrant legal proceedings against Pro-One Performance Manufacturing, Inc., Pro-One Performance Manufacturing, Inc., agrees not to assert, plead or raise in any fashion whatsoever, whether by answer, motion or otherwise, any defense or avoidance based on the expiration or running of any statutes of limitations or repose as a result of the passage of time including, but not limited to, laches, estoppel, waiver or other equitable defense; provided, however, that any such defenses are preserved as to accumulated time periods occurring before the date the Action was commenced against Pro-One Performance Manufacturing, Inc., and provided that such legal proceedings are commenced against Pro-One Performance Manufacturing, Inc., prior to the "termination" of the instant Action by and against all parties.

4. The parties further expressly agree to waive, and Pro-One Performance Manufacturing, Inc., agrees not to assert as a defense, the procedural requirements and time limits set forth by the Federal rules of Civil Procedure, including but not limited to FCRP 14, with respect to the initiation of a third party-action. It is expressly agreed that a party to this agreement seeking to assert claims against Pro-One Performance Manufacturing, Inc., as set forth in the preceding paragraph, shall not be required to obtain leave of Court or consent of any other party to do so.

5. The execution of this Agreement does not constitute an admission or acknowledgment of any liability by Pro-One Performance Manufacturing, Inc., with respect to the Action or underlying occurrences.

6. The execution of this Agreement does not constitute an admission or acknowledgment by Plaintiff Marcus J. (Marc) Mathews or any named defendant as to which statutes of limitations or repose, or other defenses concerning the timeliness of commencing an action or proceeding, are applicable to any claims or potential claims of Plaintiff Marcus J. (Marc) Mathews or any named defendant.

7. Pro-One Performance Manufacturing, Inc., expressly reserves all rights and remedies which it may have in law or equity, except as set forth in this Agreement with respect to statutes of limitations or repose, to contest or defend any claim or cause of action Plaintiff Marcus J. (Marc) Mathews or any named defendant may assert or initiate against Pro-One Performance Manufacturing, Inc., in any suit or action.

8. This Agreement contains the entire agreement between the parties and no statement, promise or inducement made by any party to this Agreement that is not set forth in this Agreement will be valid or binding. This Agreement may not be enlarged, modified or altered except in writing signed by authorized person(s) on behalf of all parties.

9. The undersigned counsel for the parties certify that they are fully authorized to enter into and to bind such parties to the terms and conditions of this Agreement.


10. This Agreement is effective upon execution by counsel for the parties, and without the requirement of filing with or endorsement by any Court.

11. This Tolling Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed and may be filed as a single document.

BOTTAR & LEONE, PLLC
Counsel for Marcus J. (Marc) Mathews

Dated: December 4, 2007


By:


MICHAEL PORTER, ESQ.
Bar Roll No.: 512707
120 Madison Street, Suite 1600
Syracuse, New York 13202

~~THE ROSE LAW FIRM, PLLC~~
Counsel for Pro-One Performance Mfg., Inc.

January 9, 2008
Dated: ~~December~~ 9, ~~2007~~


By:


KEITH B. ROSE, ESQ.
Bar Roll No. 102474
501 New Karner Road
Albany, New York 12205

COSTELLO, COONEY, & FEARON, PLLC
Counsel for Defendant, Air Fasteners, Inc.

Dated: December 4, 2007

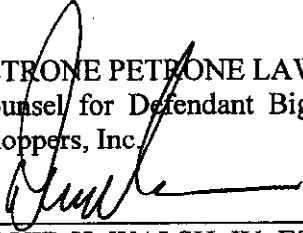
By:


SHELLY L. DIBENEDETTO, ESQ.
Bar Roll No. 508989
Salina Place, 205 South Salina Street
Syracuse, New York 13202-1327

Dated: December 4, 2007

By:

PETRONI PETRONI LAW FIRM
Counsel for Defendant Big Bear American Made
Choppers, Inc.



DAVID H. WALSH, IV, ESQ.
Bar Roll No. 572032
1624 Genesee Street
Utica, New York 13502

WILSON ELSER LAW FIRM
Counsel for Defendant Gold Rush Motor Sports,
Inc.

Dated: December __, 2007


By:

JENNIFER R. OXMAN, ESQ.
Bar Roll No. _____
150 East 42nd Street
New York, New York 10017-5639

GOLDBERG SEGALLA, LLP
Counsel for Defendant Standard Bolt, Nut & Screw
Co., Inc.

Dated: December 4, 2007

By:



LATHA RAGHAVAN, ESQ.
Bar Roll No. 505932
7 Southwoods Boulevard
Suite 300
Albany, New York 12211

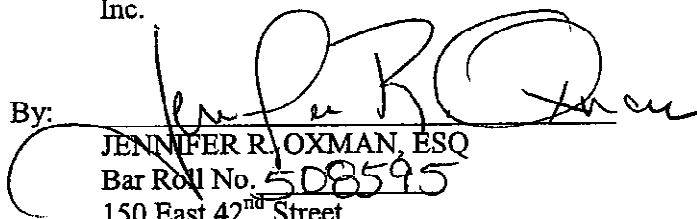
PETRONE PETRONE LAW FIRM
Counsel for Defendant Big Bear American Made
Choppers, Inc.

Dated: December __, 2007

By: _____
DAVID H. WALSH, IV, ESQ.
Bar Roll No. _____
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Utica, New York 13502

WILSON ELSER LAW FIRM
Counsel for Defendant Gold Rush Motor Sports,
Inc.

Dated: December 18, 2007

By:  _____
JENNIFER R. OXMAN, ESQ.
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GOLDBERG SEGALLA, LLP
Counsel for Defendant Standard Bolt, Nut & Screw
Co., Inc.

Dated: December __, 2007

By: _____
LATHA RAGHAVAN, ESQ.
Bar Roll No. _____
7 Southwoods Boulevard
Suite 300
Albany, New York 12211

LAW OFFICES OF CHARLES C. KHYM
Counsel for Defendant Marc Susman d/b/a Classic
& Custom Rides

Dated: December __, 2007

By: _____
DAVID LAWRENCE, ESQ.
Bar Roll No. _____
39-01 Main Street, Suite 608
Flushing, New York 11354

TREVETT CRISTO SALZER
& ANDOLINA, P.C.

Dated: December 4, 2007

By: _____
LOUIS B. CRISTO, ESQ.
Bar Roll No. 568361
Two State Street, Suite 1000
Rochester, New York 14614

SO ORDERED:


HON. DAVID E. PEEBLES

DATE

LAW OFFICES OF CHARLES C. KHYM
Counsel for Defendant Marc Susman d/b/a Classic
& Custom Rides

Dated: December __, 2007

By:



DAVID LAWRENCE, ESQ.
Bar Roll No. 514404
39-01 Main Street, Suite 608
Flushing, New York 11354

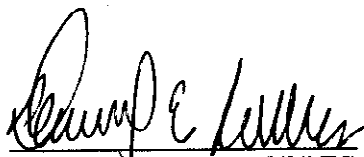
TREVETT CRISTO SALZER
& ANDOLINA, P.C.

Dated: December __, 2007

By:

LOUIS B. CRISTO, ESQ.
Bar Roll No. _____
Two State Street, Suite 1000
Rochester, New York 14614

SO ORDERED:



HON. DAVID E. PEEBLES

1/9/08

DATE

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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Plaintiff,

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BIG BEAR AMERICAN MADE CHOPPERS, INC.,
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RACK COMPANY, INC., AIR FASTENERS, INC.,
GOLD RUSH MOTORSPORTS, INC, and MARC
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Defendants.

Civil Action No.: 04-CV-1206
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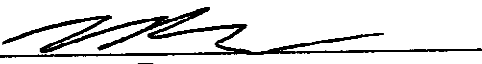
**STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF
DEFENDANT PRO-ONE PERFORMANCE MANUFACTURING, INC.**

WHEREAS, the plaintiff Marcus J. (Marc) Mathews, and defendants Pro-One Performance Manufacturing, Inc., Big Bear American Made Choppers, Inc., Standard Bolt, Nut & Screw Co., Inc., Anorack/Anodize Rack Company, Inc., Gold Rush Motorsports, Inc., and Marc Susmann d/b/a Classic & Custom Rides, have agreed to the tolling agreement to which this stipulation is annexed, it is hereby stipulated by and between the parties to the above-captioned action, pursuant to Rule 41 (a)(1)(ii) of the Federal Rules of Civil Procedure: (1) that the claims of plaintiff, and the cross-claims of defendants, as against defendant Pro-One Performance Manufacturing, Inc., in the above-captioned action, be, and hereby are, dismissed

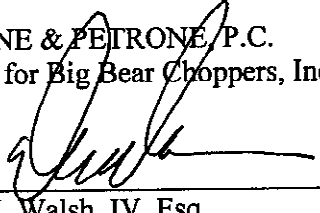
without prejudice; and (2) that defendant Pro-One Performance Manufacturing, Inc., be, and hereby is, dismissed from the above-captioned action without prejudice.

This Stipulation of Dismissal may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed and may be filed as a single document.

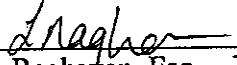
BOTTAR & LEONE, PLLC
Counsel for Marcus J. (Marc) Mathews

By: 
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Dated: December 4, 2007
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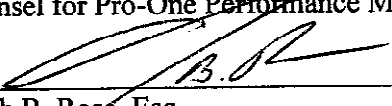
PETRONE & PETRONE, P.C.
Counsel for Big Bear Choppers, Inc

By: 
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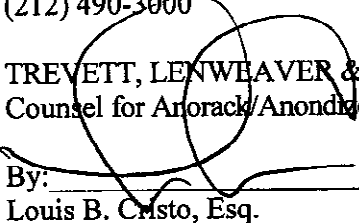
THE ROSE LAW FIRM, PLLC
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By: 
Keith B. Rose, Esq.
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WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP
Counsel for Gold Rush Motorsports, Inc.

By: _____
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TREVETT, LENWHAVER & SALZER, P.C.
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2 State Street, Suite 1000
Rochester, New York 14614
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without prejudice; and (2) that defendant Pro-One Performance Manufacturing, Inc., be, and hereby is, dismissed from the above-captioned action without prejudice.

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Counsel for Marcus J. (Marc) Mathews

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Michael Porter, Esq.
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PETRONE & PETRONE, P.C.
Counsel for Big Bear Choppers, Inc

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TREVETT, LENWEAVER & SALZER, P.C.
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Dated: December __, 2007
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By: Shelly L. DiBenedetto
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d/b/a Custom & Classic Rides

By: _____
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Dated: December __, 2007
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COSTELLO, COONEY & FEARON, LLP
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LAW OFFICES OF CHARLES C. KHYM
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By: David Lawrence
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So Ordered,

David E. Peebles
David E. Peebles
United States Magistrate Judge
Dated: 1/9/08

Syracuse, New York